TRC/MMS 07949-08002

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

ALLIANZ GLOBAL RISKS U.S. INSURANCE COMPANY, as subrogee of Buffets Holdings, Inc.,	)	
Plaintiff,	)	No.: 07 C 7149
v.	)	
NOVAK CONSTRUCTION COMPANY, an Illinois corporation.	)	
Defendant.	)	

NOVAK CONSTRUCTION COMPANY'S
ANSWER TO PLAINTIFF'S CORRECTED AMENDED COMPLAINT

NOW COMES Defendant, NOVAK CONSTRUCTION COMPANY, by and through one of its attorneys, Timothy R. Couture of JOHNSON & BELL, LTD., and for its Answer to Plaintiff's Corrected, Amended Complaint states as follows:

FACTUAL ALLEGATIONS

1. At all relevant time, Buffets owned and operated an Old Country Buffet restaurant located at 445 East Palatine Road, Arlington Heights, Illinois (hereinafter, the "Restaurant").

ANSWER: Defendant admits the allegations contained in paragraph 1.

2. The Restaurant was located in a shopping mall owned by the Town & Country Plaza.

ANSWER: Defendant admits the allegations contained in paragraph 2.

3. This action arises from a fire at the Restaurant on or about March 12, 2006.

ANSWER: Defendant admits the allegations contained in paragraph 3.

4. At all relevant times, Defendant Novak Construction was an Illinois corporation engaged in providing general contracting services, with its principal place of business at 3423 N. Drake Avenue, 2nd Floor, Chicago, Illinois 60618.

ANSWER: Defendant admits that it is a construction contractor with its principal place of business as stated, admits that it provides general contracting services when its contracts call for it to do so, but further asserts that at all times relevant to Plaintiff's Complaint it was acting as a construction manager for some, but not all, of the work proceeding at the subject mall.

5. At all relevant times, Defendant Restaurant Specialties, Inc. ("RSI") was an Ohio corporation engaged in. providing construction services with its principal place of business located in Columbus, Ohio.

ANSWER: Defendant admits the allegations contained in paragraph 5.

6. At all relevant times, Defendant Kieffer & Co., Inc. ("Kieffer") was a Wisconsin corporation engaged in providing construction services. with its principal place of business located in Sheboygan, Wisconsin.

ANSWER: Defendant admits the allegations contained in paragraph 6.

7. At all relevant times, Defendant Aero Electric & Communications ("Aero") was an Illinois corporation engaged. in providing construction services with its principal place of business located in Loves Park, Illinois.

ANSWER: Defendant admits the allegations contained in paragraph 7.

8. At all relevant times, Defendant Midwest Sign & Lighting ("Midwest") was an Illinois corporation engaged in providing construction services with its principal place of business located in County Club Hills, Illinois.

ANSWER: Defendant admits the allegations contained in paragraph 8.

9. Prior to March 12, 2006, Town & County hired Defendant Novak Construction to act as the general contractor in a remodeling project at the shopping center,

including work on the Buffets location.

ANSWER: Defendant Novak admits that it contracted to act as construction manager for certain exterior renovation and construction work at Town & Country, denies the remaining allegations of paragraph 9, and asserts that at the time specified there was construction proceeding involving the Old Country Buffet space with which it had no involvement.

10. During the course of construction, it became necessary to remove signage for the Buffets restaurant.

ANSWER: Defendant admits the allegations contained in paragraph 10.

11. Novak Construction and/or another contractor working under their direction removed the signage without locking out the circuit for the sign.

ANSWER: Defendant denies the allegations contained in paragraph 11.

12. The circuit was later reenergized, resulting in a fire at the Restaurant.

ANSWER: Defendant admits that there was a fire, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 12.

13. As a result of that fire, Buffets suffered damages in an amount in excess of the jurisdictional limit, $75,000.00.

ANSWER: Defendant admits that there was a fire, denies that Plaintiff was damaged to the extent claimed, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 13.

14. Plaintiff Allianz provided property insurance to Buffets pursuant to Policy No. 3005711.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14.

15. As a result of the March 12, 2006 fire damage, Buffets made a claim to Allianz under Policy No. 3005711.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 15.

16. Pursuant to its policy of insurance, Allianz was required to pay and did pay to Buffets an amount in excess of $75,000.00.

ANSWER: Defendant denies that Plaintiff was damaged to the extent claimed, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 16.

17. With that payment, Allianz has become subrogated to the rights of Buffets to the extent of such payment.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 17.

COUNT I - NEGLIGENCE OF NOVAK CONSTRUCTION

18. Allianz hereby incorporates by reference paragraphs 1 through 17 as if fully stated herein.

ANSWER: Defendant restates and reasserts its answers to paragraphs 1 through 17 as its answers to paragraph 18.

19. At all relevant times, Defendant Novak Construction ("Novak") was responsible for performing construction services at the Buffets restaurant.

ANSWER: Defendant denies the allegations contained in paragraph 19.

20. In performing those construction. services, Novak owed a duty to Buffets to act in a safe, careful and workmanlike manner.

ANSWER: Defendant admits all duties imposed by law, denies that paragraph 20 properly states those duties, and specifically denies that it owed any duty to Buffets or Plaintiff.

21. Defendant Novak breached its duty to Buffets through the following acts and/or omissions constituting negligence, including but not limited to:

a. improperly removing the signs;

b. failing to inspect the circuit following the removal of the signs to ensure that it was properly locked out.

c. failing to warn Buffets that the sign was improperly removed, so that it could act accordingly to prevent damage to property;

d. failing to observe applicable safety standards in the removal of the sign;

e. failing to properly train its employees in the removal of signs;

f. failing to take all reasonable and necessary precautions to prevent the fire;

g. failing to supervise its employees with respect to the removal of the sign;

h. failing to use due care and safety in performing its work;

i. violating federal, state and local codes, statutes and/or ordinances;.

j. any and all other acts and/or omissions constituting negligence, which become known through the course of discovery.

ANSWER: Defendant denies each and every allegation of paragraph 21, including subparagraphs a-j.

22. As a direct and proximate result. of Novak's negligence, Buffets suffered damage in an amount in excess of $75,000.00.

ANSWER: Defendant denies the allegations contained in paragraph 22.

23. As a result of this damage, Buffets made a claim to Allianz.

ANSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 23.

24. Pursuant to its policy of insurance, Allianz was required to pay and did pay to Buffets an amount in excess of. $75,000.00.

ANSWER: Defendant denies that Plaintiff was damaged to the extent claimed, but is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations contained in paragraph 24.

25. With that payment, Allianz has become subrogated to the rights of Buffets to the extent of such Payment.

NSWER: Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25.

WHEREFORE, Defendant Novak Construction Company respectfully requests that this Court enter a judgment in its favor, and against Plaintiff and award it costs, expenses and such other relief as this Court may deem just.

COUNT II - NEGLIGENCE OF RESTAURANT SPECIALTIES, INC.

As Count II is not pled against Defendant Novak Construction Company, this Defendant makes no answer thereto. To the extent that any allegation of Count II is determined or deemed to be pled against Novak Construction Company, this Defendant denies each such allegation.

COUNT III - NEGLIGENCE OF KIEFFER & CO. INC.

As Count III is not pled against Defendant Novak Construction Company, this Defendant makes no answer thereto. To the extent that any allegation of Count III is determined or deemed to be pled against Novak Construction Company, this Defendant denies each such allegation.

COUNT IV - NEGLIGENCE OF AERO ELECTRIC & COMMUNICATIONS

As Count IV is not pled against Defendant Novak Construction Company, this Defendant makes no answer thereto. To the extent that any allegation of Count IV is determined or deemed to be pled against Novak Construction Company, this Defendant denies each such allegation.

COUNT V - NEGLIGENCE OF MIDWEST SIGN & LIGHTING, INC.

As Count V is not pled against Defendant Novak Construction Company, this Defendant makes no answer thereto. To the extent that any allegation of Count V is determined or deemed to be pled against Novak Construction Company, this Defendant denies each such allegation.

DEFENDANT NOVAK CONSTRUCTION HEREBY RELIES ON ITS PREVIOUSLY FILED JURY DEMAND

Respectfully submitted,

NOVAK CONSTRUCTION COMPANY,

By: s/ Timothy R. Couture

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